

U.S. DISTRICT COURT  
WESTERN DISTRICT OF LOUISIANA  
RECEIVED

AUG 29 2006

ROBERT H. SHEWELL, CLERK  
BY                      DEPUTY

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF LOUISIANA  
ALEXANDRIA DIVISION**

**LAVELLE MYERS**

**CIVIL ACTION NO. 06-1207-A**

**SECTION "P"**

**-vs-**

**JUDGE DRELL**

**BURL CAIN, WARDEN**

**MAGISTRATE JUDGE KIRK**

---

**JUDGMENT**


For the reasons stated in the Report and Recommendation of the Magistrate Judge previously filed herein, and after an independent review of the record including the objections filed by Petitioner, and having determined that the Report and Recommendation is correct under the applicable law;

IT IS ORDERED that Claim 2 (Jury Instruction, Penalty for Manslaughter), Claim 3 (Selection of Grand Jury Foreperson), and Claim 4b (Presumption of Sanity) be DENIED AND DISMISSED WITH PREJUDICE as technically exhausted by procedurally defaulted;

IT IS FURTHER ORDERED that Claims 1 (Capacity to Proceed) and 4a (Ineffective Assistance of Counsel) be DENIED AND DISMISSED WITH PREJUDICE pursuant to the provisions of Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts; and

IT IS FURTHER ORDERED that Claim 5 (DNA Testing) be DENIED AND DISMISSED WITHOUT PREJUDICE because Petitioner failed to exhaust available state court remedies prior to filing his petition.

SIGNED on this 29<sup>th</sup> day of August, 2006, at Alexandria, Louisiana.

A handwritten signature in black ink, appearing to read "Dee D. Drell", written over a horizontal line.

DEE D. DRELL  
UNITED STATES DISTRICT JUDGE